STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CRAIG ALDERSON, Charging Party, V. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. SF-CE-361-H PERB Decision No. 1002-H June 23, 1993

Appearances: Mary G. Higgins, Representative, for Craig Alderson; Edward M. Opton, Jr., Attorney, for Regents of the University of California.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Craig Alderson (Alderson) of a Board agent's dismissal (attached hereto) of his unfair practice charge. Alderson alleged that the Regents of the University of California (UC) violated section 3571(a), (b), (c) and (d) of the Higher Education Employer-Employee Relations Act (HEERA)[1] by failing to meet and confer with representatives of

[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states, in pertinent part:

> It shall be unlawful for the higher education employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of

the clerical bargaining unit (Unit 12) in advance of agreeing to the transfer of certain classifications from Unit 12 to Unit 13. Both Unit 12 and Unit 13 are represented by the American Federation of State, County and Municipal Employees (AFSCME). The Board agent dismissed the charge on the following grounds: (1) the charge was untimely filed; (2) Alderson does not have standing to file a charge alleging a violation of section 3571(b), (c) and (d); (3) Alderson failed to allege a prima facie violation of section 3571(d); and (4) Alderson failed to allege a prima facie violation of section 3571(a).

The Board has reviewed the entire record in this case, including Alderson's appeal. We find the dismissal to be free of prejudicial error and adopt it as the decision of the Board itself together with the following discussion.

> this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

DISCUSSION

Timeliness

UC and AFSCME (Unit 13) agreed to the transfer of certain job classifications during negotiations which concluded on April 30, 1992. Alderson filed his unfair practice charge approximately eight months later on December 31, 1992.

HEERA section 3562.2(a) sets forth the six-month statutory-limitation period for unfair practice charges. The statutory period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547; Healdsburg Union High School District (1984) PERB Decision No. 467.)

In this case, to be timely, the unlawful conduct must have occurred on or after June 30, 1992. In his charge, Alderson did not allege any date when Unit 12 became aware of the agreement to transfer classifications. Even after having been informed in the warning letter that the unlawful conduct must have occurred on or after June 30, 1992, he failed to file an amended charge. In his appeal, Alderson argues that the charge was timely because both sides agreed that the transfer would be "recognized and completed" on July 1, 1992. He did not allege that this was the date on which Unit 13 became aware of the agreement. In fact, it is unlikely that representatives of Unit 12 had no knowledge of the agreement until two months after the negotiations had concluded, particularly in light of the fact

that both units are represented by the same employee organization (AFSCME). Therefore, the Board agent properly dismissed the charge as being untimely filed.

Standing

The Board agent's warning letter informs Alderson that he, as an individual employee, does not have standing to file a charge alleging a violation of the employer's duty to bargain in good faith. (Oxnard School District (1988) PERB Decision No. 667 and Regents of the University of California (1990) PERB Decision No. 849-H.) Alderson was informed that a charge based on a violation of section 3571(b), (c) and (d) could only be brought by an employee organization.

In his appeal, Alderson states that a special meeting was called of "all bargaining delegates." At the meeting there was a unanimous decision to file a charge against both UC and AFSCME. It was further determined that Alderson was the "correct elected official to proceed with the actions." Even if Alderson could be found to be representing an employee organization other than AFSCME, in Hanford Joint Union High School District (1978) PERB Decision No. 58, the Board held that a nonexclusive employee organization may not file a section 3543.5(c) charge because to do so would interfere with the rights of the exclusive representative to represent its members.

It was AFSCME who petitioned for the unit modification with PERB on April 9, 1992. As Alderson's own appeal reveals, AFSCME was not interested in filing this charge, but rather was to

become a respondent to a charge based on the same facts. Alderson filed a charge against AFSCME on July 15, 1992, which was ultimately dismissed by PERB Order No. Ad-242-H. Alderson did not file this charge as a representative of AFSCME, but as an individual employee. Consequently, the Board agent was correct in determining that he does not have standing to file a charge based on a violation of section 3571(b), (c) and (d).

ORDER

The unfair practice charge in Case No. SF-CE-361-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350

February 26, 1993

Mary G. Higgins
586 Clarinada #20
Daly City, CA 94015

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Craig Alderson v. The Regents of the University of California
Unfair Practice Charge No. SF-CE-361-H

Dear Ms. Higgins:

The above-referenced unfair practice charge, filed on December 31, 1992, alleges that the Regents of the University of California (Regents) failed to meet and confer with representatives of the Clerical bargaining unit in advance of agreeing to the transfer of classifications from the Clerical bargaining unit to the Patient Care Technical bargaining unit. This conduct is alleged to violate Government Code sections 3571(a),(b),(c), and (d) of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you, in my attached letter dated February 17, 1993, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to February 26, 1993, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my February 17, 1993 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself

before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

CHARLES F. MCCLAMMA

Public Employment Relations Specialist

Attachment

cc: Edward M. Upton, Jr.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350

February 17, 1993

Mary G. Higgins
586 Clarinada #20
Daly City, CA 94015

Re: **WARNING LETTER**
Craig Alderson v. The Regents of the University of California
Unfair Practice Charge No. SF-CE-361-H

Dear Ms. Higgins:

The above-referenced unfair practice charge, filed on December 31, 1992, alleges that the Regents of the University of California (Regents) failed to meet and confer with representatives of the Clerical bargaining unit in advance of agreeing to the transfer of classifications from the Clerical bargaining unit to the Patient Care Technical bargaining unit. This conduct is alleged to violate Government Code sections 3571(a),(b),(c), and (d) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation revealed the following facts. On July 11, 1983, the American Federation of State, County and Municipal Employees (AFSCME) was certified by PERB as the exclusive representative of employees of the Regents in the Patient Care Technical bargaining unit (Unit #13). On July 12, 1983, AFSCME was also certified by PERB as the exclusive representative of employees of the Regents in the Clerical and Allied Services bargaining unit (Unit #12). Craig Alderson is employed by the Regents at the University of California at San Francisco (UCSF). He also serves as an AFSCME representative of Unit #12, a position to which he was elected on March 13, 1992.

On April 30, 1992, AFSCME, through its Chief Negotiator, concluded Unit #13 collective bargaining negotiations with the Regents. A part of the parties' tentative agreement provided for the transfer of certain classifications from Unit #12 to Unit #13. The Regents failed to provide notice to, or to meet and confer with, Unit #12 representatives concerning the transfer of classifications. Further, the transfer was contingent upon ratification of the collective bargaining agreement, and only AFSCME members within Unit #13 were allowed to vote on contract ratification.

On June 9, 1992, AFSCME Council 10 filed a unit modification petition with PERB seeking approval of the aforementioned transfer. The Regents concurred in the request. Therefore, on June 9, 1992, the Regional Director of the PERB San Francisco Regional Office issued a Unit Modification Order approving the deletion of the identified classifications from the Clerical and Allied Services Unit and their addition to the Patient Care Technical Unit.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the HEERA for the reasons that follow.

Initially, it must be noted that unfair practice charges must be timely filed. Government Code section 3563.2(a) states, in pertinent part:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

The charge was filed on December 31, 1992. Claims arising prior to June 30, 1992, are therefore untimely and outside of PERB's jurisdiction. (California State University, San Diego (1989) PERB Decision No. 718-H; United Teachers - Los Angeles (Farrar) (1990) PERB Decision No. 797.) It appears that the unfair practices alleged in the charge occurred prior to June 30, 1992, and must be dismissed as untimely.

Even if the charge were timely filed, it fails to state a prima facie violation of the HEERA. The thrust of Mr. Alderson's charge is that the Regents violated HEERA section 3571(b) and (c)[1] "by failing to meet and confer with the exclusive

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[1]HEERA section 3571 provides, in pertinent part:

> It shall be unlawful for the higher education employer to do any of the following:
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

representative of Unit 12." Mr. Alderson also alleges that the Regents violated HEERA section 3571(d) because the transfer of classifications resulted in changes to the administrative makeup of AFSCME locals on some university campuses.

In Hanford Joint Union School District (1978) PERB Decision No. 58, the Board noted that, although the right to file an unfair practice charge extends to any employee, employee organization, or employer, the specific grounds which can be alleged are limited. The Board went on to hold that a nonexclusive employee organization may not file a section 3543.5(c)[2] charge because to do so would interfere with the right of the exclusive representative to determine matters on which it decides to negotiate.

The Board subsequently extended the reasoning in Hanford to such claims filed by individual employees. Under both the EERA (Oxnard School District (1988) PERB Decision No. 667), and the HEERA (Regents of the University of California (1990) PERB Decision No. 849-H) the Board has found that an individual employee does not have standing to file a charge alleging a violation of the employer's duty to bargain in good faith.

More recently, in State of California (Department of Corrections) (1993) PERB Decision No. 972-S, the Board addressed the question of whether individual employees had standing to pursue allegations of a violation of sections 3519(b) and (d) of the Dills Act.[3] The Board, concluding that they did not, stated,

> To grant an individual standing to file charges of this nature would undermine stable labor-management relations existing between

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> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. . .

[2]This subsection of the Educational Employment Relations Act (EERA or Act) makes it unlawful for a public school employer to "[r]efuse or fail to meet and negotiate in good faith with an exclusive representative." It is essentially identical to HEERA section 3571(c).

[3]These sections are essentially identical to sections 3571(b) and (d) of the HEERA.

> the employer and the exclusive representative.

This charge identifies Mr. Alderson as the charging party, and describes him to be a "Unit 12 AFSCME Representative." However, the fact that Mr. Alderson holds a position with the organization does not suggest or establish that Mr. Alderson filed on behalf of AFSCME. Rather, he appears to be filing as an individual employee. As such, he lacks standing to file a charge alleging a violation of section 3571(b),(c), and (d).

Even if Mr. Alderson had standing to allege a violation involving section 3571(d), the charge would be insufficient. Domination occurs when the employer controls the administration of an employee organization and renders it unable to make wholehearted efforts on behalf of the employees it represents. (Santa Monica Unified School District (1978) PERB Decision No. 52; Antelope Valley Community School District (1979) PERB Decision No. 97; Clovis Unified School District (1984) PERB Decision No. 389.) Interference under section 3571(d) involves intruding into the internal functioning of the employee organization, setting up a rival organization, or engaging in a campaign to induce employees to support a particular employee organization. (Antelope Valley Community College District, supra, PERB Decision No. 97.) However, the facts alleged in the charge do not constitute either domination or interference by the Regents within the meaning of section 3571(d). The fact that the transfer of some classifications from one bargaining unit to another resulted in changes to the makeup of AFSCME locals does not, without more, indicate the Regents attempted to intrude into the internal functioning of the organization.

Finally, Mr. Alderson alleges that the transfer of classifications from Unit #12 to Unit #13 has had "a significant negative impact on the labor relations environment for the classes involved," constituting, therefore, discrimination by the Regents against those employees in violation of Government Code section 3571(a).

To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1) the employee exercised rights under the HEERA, (2) the employer had knowledge of the exercise of those rights, and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Dec. No. 210; Carlsbad Unified School District (1979) PERB Dec. No. 89; Department of Developmental

Services (1982) PERB Dec. No. 228-S; California State University (Sacramento) (1982) PERB Dec. No. 211-H.)

The facts as alleged show that Mr. Alderson exercised rights under the HEERA by serving as the Unit #12 representative at UCSF. Knowledge of such visible activity reasonably can be imputed to the employer. However, the charge fails to allege facts from which it can be concluded that the Regents' motive for the transfer of classifications was this protected activity. The appropriate "nexus" elements are lacking (Novato Unified School District (1982) PERB Dec. No. 210). In addition, although the charge alleges harm to employees resulting from "a negative impact on the labor relations environment," it fails to allege specific facts supporting this conclusion. Thus, the charge fails to provide prima facie evidence of a violation either of HEERA section 3571(a) or, concurrently, of section 3571(b) based on the same facts. Further, there are no additional facts indicating an independent violation of section 3571(b), even if Mr. Alderson had standing to allege such a violation.

For these reasons the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge. contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service filed with PERB. If I do not receive an amended charge or withdrawal from you before February 26, 1993, I shall dismiss this charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,

CHARLES F. McCLAMMA
Public Employment Relations Specialist